

GILBERT D. SIGALA  
2010 JAN 26 PM 3:20  
GILBERT D. SIGALA  
1818 W. Beverly Blvd., Suite 206  
Montebello, CA 90640  
Phone Number: (323) 726-2150  
Facsimile Number: (323) 726-9183

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

In re: ) Chapter 11  
CIRCUIT CITY STORES, INC., et al., ) Case No. 08-35653  
Debtors. ) Jointly administered  
MOTION FOR LEAVE TO FILE A  
LATE PROOF OF CLAIM BY  
CLAIMANT JOHN BATIOFF  
Date: February 24, 2010  
Time: 2:00pm (eastern)  
Department: Judge Huennekens

To Respondent CIRCUIT CITY STORES, INC. and its attorneys of record.

1. Claimant JOHN BATIOFF hereby moves the court to grant an order allowing him to file a late proof of claim on the grounds that he substantially complied and/or is entitled to relief on the basis of excusable neglect. This motion is based upon the points and authorities and declaration submitted by counsel in support of the relief requested.

2. Claimant John Batioff filed a proof of claim with Circuit City with respect to this bankruptcy on April 2, 2009. The deadline for filing such claim was January 30, 2009, and Claimant therefore makes the following application for relief.

3. Claimant John Batioff has a claim for \$275,000.00 based upon injuries sustained on December 18, 2007 in a fall at a Circuit City store in Fullerton, California. Claimant alleges that a

1 dangerous condition existed in the form of a mat covering the threshold of the entrance to the store,  
2 which caused Mr. Batioff to fall and sustain personal injuries. Attached as **Exhibit "1"** is a demand  
3 letter to Circuit City dated June 24, 2008, referring to medical reports and billings which document  
4 severe cervical injury to Mr. Batioff requiring surgical intervention as recommended by  
5 neurosurgeon Michael Sukoff, M.D. in his report of April 9, 2008.

6 4. As further set forth in the declaration of Claimant's counsel, claimant should not be  
7 subject to the omnibus objection and should be afforded leave to file a late claim because: (1) his  
8 claim was pending and listed in a printout of claims filed before the deadline, (2) the adjusters of the  
9 claim for Circuit City never notified Claimant's counsel that deadlines for claims were imminent,  
10 (3) Claimant's counsel did not receive adequate notice of the deadline for filing a proof of claim  
11 from any other representative of Circuit City Stores, Inc., and (4) excusable neglect should allow the  
12 claim to be considered.

13 5. As previously set forth in the response by Claimant's counsel to the ninth omnibus  
14 objection, his staff had been advised by Kurtzman, Carson Consultants LLC, the west coast  
15 representatives of Circuit City, that a claim was in their system as of February 20, 2009, as  
16 confirmed by information obtained from their database, a copy of which is attached as **Exhibit "2"**.  
17 As late as October 28, 2008, Specialty Risk Services, the adjusters for Circuit City, was still  
18 investigating the matter and corresponding with Claimant's counsel with no mention of an  
19 impending bankruptcy or need to give a proof of claim (a copy of the letter and reply is attached as  
20 **Exhibit "3"**).

#### 21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 Bankruptcy rule 9006(b) provides impertinent part ... **(b) Enlargement.**

#### 23 **(1) In General.**

24 Except as provided in paragraphs (2) and (3) of this subdivision, when an act is  
25 required or allowed to be done at or within a specified period by these rules or by  
26 a notice given there under or by order of court, the court for cause shown may at  
27 any time in its discretion (1) with or without motion or notice order the period  
28 enlarged if the request therefore is made before the expiration of the period

1 originally prescribed or as extended by a previous order or (2) on motion made  
2 after the expiration of the specified period permit the act to be done where the  
3 failure to act was the result of excusable neglect.

4  
5 In this case Claimant filed a proof of claim approximately 60 days past January 30, 2009, the  
6 deadline set by the court. Only then did the counsel begin receiving notices from Circuit City,  
7 which included an omnibus objection to disallow the claim. Claimant timely filed reply papers on  
8 June 29, 2009, and has participated in the status hearings since July 15, 2009. The next status  
9 hearing is scheduled for February 24, 2010. It is believed that the bankruptcy is at a stage where no  
substantial prejudice would inure to Circuit City if this claim were allowed.

10 Case law has recognized that the bankruptcy court is permitted to grant relief in cases such  
11 as this where there has been an adequate showing of excusable neglect on the part of claimant's  
12 counsel to afford relief and allow the claim to proceed. The case of Pioneer Investment v.  
13 Brunswick (1993) 507 U.S. 380, 123 L.Ed.2d 74, 113 S.Ct 1489 is illustrative in demonstrating the  
14 basis for which relief can be afforded. There the attorney acknowledged receiving notice of the  
15 deadline, yet filed late due to disruptions in his former law firm which disallowed him access to his  
16 file, and the court found that excusable neglect can extend to cases where the failure to act was due  
17 to circumstances beyond control. (Id., 507 U.S. at 386.)

18 Here, Claimant can demonstrate an adequate degree of diligence exercised in filing the claim  
19 once advised of the need to do so by representatives of Circuit City, and even if operating under the  
20 mistaken believe that a claim was in place as of February 2009. Moreover, Claimant has been  
21 diligent in responding to the Ninth Omnibus Objection raised, and has made this motion out of  
22 caution in the event relief is not afforded elsewhere.

23 Respectfully submitted.

24 Date: January 24, 2010

LAW OFFICES OF GILBERT D. SIGALA

26  
27 By: 

Gilbert D. Sigala, Esq.

PROOF OF SERVICE  
STATE OF CALIFORNIA COUNTY OF LOS ANGELES

I, Helen Tejada, I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within entitled action; my business address is 1818 W. Beverly Blvd., Suite 206, Montebello, California 90640.

On January 26, 2010, I served the foregoing documents described as:

MOTION FOR LEAVE TO FILE A LATE PROOF OF CLAIM BY CLAIMANT JOHN  
BATIOFF

on all interested parties in this action.

[ ] by personal service [X] by placing [ ] the original [X] a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States post office mail box at Montebello, California, addressed as follows:

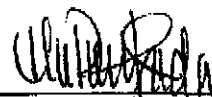
SKADDEN, SRPS, SLATE, MEAGHER & FLOM, LLP  
Gregg M. Galardi, Esq.  
P. O. Box 636  
Wilmington, Delaware 19899-0636

SKADDEN, SRPS, SLATE, MEAGHER & FLOM, LLP  
Chris L. Dickerson, Esq.  
333 W. Wacker Drive  
Chicago, Illinois 60606

Dion W. Hayes  
Douglas M. Foley  
One James Center  
901 E. Cary Street  
Richmond, Virginia 23219

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on January 26, 2010 at Montebello, California.

  
Helen Tejada

**EXHIBIT “1”**

**Law Offices of Gilbert D. Sigala**

1818 W. Beverly Blvd., Suite 206  
Montebello, CA 90640  
(323) 726-2150  
Fax (323) 726-9183

June 24, 2008

Lisa Griffith  
Specialty Risk Services  
P.O. Box 799  
Marlton, NJ 08053

RE: Our Client(s) : John Batioff  
Your Insured : Circuit City  
Your Claim No.: YLB46588L  
Date of Loss : 12/18/07

Dear Ms. Griffith:

As you know the undersigned represents the interest of John Batioff in the above referenced matter. We have now received the medical specials and are in a position to make demand for settlement of this claim without further need for litigation. To that end, enclosed please find the following medical specials

O'Connor Chiropractic, Inc. ....	\$1,087.50
Advanced Professional Imaging Medical Group . . .	\$1,760.00
Michael H. Sukuoff, M.D. ....	<u>\$1,200.00</u>
	\$4,047.50

As you know it is our position that your principal is one hundred percent at fault for this accident. The facts reveal that on December 18, 2007, my client was walking into a store when his foot got caught on an improperly positioned doormat that was lying half-way over the metal threshold causing him to fall forward landing on his knee causing the injuries described below.

Due to continuing symptomatology, Mr. Batioff presented himself to O'Connor Chiropractic on December 21, 2007 complaining of neck, right arm, lower back and hip pain with weakness in both legs. He was placed on a course of physical therapy which consisted of multiple modalities and was periodically re-evaluated. He continued on this regimen until January 25, 2008.

Because of neurologic involvement, Mr. Batioff was referred to Michael Sukuoff for an orthopedic neurological examination. He was examined on January 2, 2008 and an MRI was

Page Two  
06/24/08  
Claim No.: YLB46588L

recommended. On January 9, 2008 an MRI was conducted at Advanced Professional Imaging Medical Group which revealed the following:

1. the C3-C4 disc level show a 3 to 4 mm. Posterior disc protrusion present. Disc dessication is present. Stenosis is noted in the anteroposterior and lateral recess diameter
2. The C4-C5 disc level shows a 3 mm. Posterior disc protrusion present. Disc dessication is present. Hypertrophic facet changes are noted anteriorly. Relative stenosis is noted in the anteroposterior and lacral recess diameter.
3. The C5-C6 disc level shows a 2 to 3 mm. Central disc protrusion present. Disc dessication is present. Relative lateral recess narrowing is present.
4. The C6-C7 disc level shows a 3 mm. Central disc protrusion present. Disc dessication is present. Spondylosis is present.

Mr Batioff returned to Dr. Sukoff for re-evaluation on April 9, 2007 with complaints of persistent neck pain and numbness of the right upper extremity radiating in a C-5-C6 fashion which is a progression of stensis and spinal compromise which was asymptomatic before the accident. Dr. Sukoff recommended surgery to correct this delicate problem in the neck.

In his supplemental report of June 14, 2008, Dr. Sukoff notes: the intensity of the disc bulges-herniations, particularly at C5-C6, are suggestive of an acute-subacute injury. The degenerative changes preexisted Mr. Batioff's fall, which not only aggravated them causing a symptoms complex but there is ample evidence that disc protrusion/herniation occurred. This is further substantiated by significant spinal cord effacement and an area of hyper-intensity at C5.

At this time our office is willing to settle this matter in the amount of \$275,000.00. Please contact me to discuss your posture towards an amicable resolution of this claim. Thank you for your anticipated prompt attention and cooperation in this matter.

Thank you for your anticipated prompt attention and cooperation in this matter.

Sincerely,

(S)

Gilbert D. Sigala

GDS:pr  
enclosure

**EXHIBIT “2”**



Creditor Data--BATIOFF, JOHN

888-830-4650

Page 1 of 1

### Creditor Data

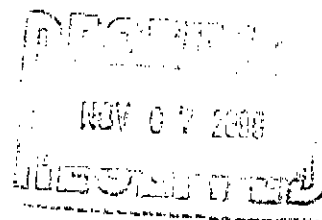
Creditor Name: BATIOFF, JOHN Creditor Notice Name:		Date Claim Filed: KCC Claim #: Amend/Replace? No
Debtor Name: Circuit City Stores West Coast, Inc. Case Number: 08-35654		
Claim Nature: General Unsecured Amount of Claim:		Creditor Info Altered? N
Schedule: F Schedule Amt: \$0.00 <i>This claim has been scheduled as Contingent, Unliquidated and Disputed.</i>		

**EXHIBIT “3”**



October 28, 2008

Gilbert D Sigala, Esquire  
1818 W Beverly Blvd  
Suite 206  
Montebello CA 90640



RE: Account: Circuit City Stores Inc  
Claimant: John Batloff  
Date of Loss: 12/18/2007  
Claim Number: YLB46588L

Dear Mr. Sigala,

Specialty Risk Services is the Third Party Administrator assigned to handle the above claim on behalf of Circuit City Stores, Inc.

Please be advised I have been recently reassigned the handling of your claim. It is necessary to speak with you regarding the above incident and our investigation to date.

Please contact me Monday through Friday between the hours of 7:00 am and 3:30 pm, Eastern Standard Time.

Thank you in advance for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. Salvati".

Rhiannon Salvati  
Account Consultant  
P O Box 799  
Marlton, NJ 08053  
Toll Free: (800) 630-0746 Ext 54479  
Facsimile: (860) 392-1866

**Law Offices of Gilbert D. Sigala**

1818 W. Beverly Blvd., Suite 206  
Montebello, CA 90640  
(323) 726-2150  
Fax (323) 726-9183

November 14, 2008

Specialty Risk Services  
P. O. Box 799  
Marlton, NJ 08053

Attn: Rhiannon Salvati

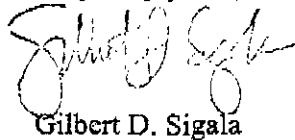
RE	:	John Batioff
Date of Loss	:	12/18/2007
Claim No.	:	YLB46588L
Account	:	Circuit City Stores Inc.

Dear Ms. Salvati,

This office represents Mr. Batioff in the above referred matter. I have had great difficulty in obtaining feedback on the status of the case. As you know, a demand package was forward it to you several months ago and you have had ample time to investigate this matter as well as the injuries occurred by my client.

At this time the case must go forward. I am proposing that we mediate the matter privately otherwise my client has instructed me to proceed with litigation. I would prefer to mediate this matter prior to litigation if we are in a position to settle the case. Thank you for your prompt attention to this mater.

Very truly yours,



Gilbert D. Sigala

FILED  
2010 JAN 26 PM 3:25  
RICHMOND DIVISION

1 Gilbert D. Sigala, Esq. (State Bar No. 109905)  
2 LAW OFFICES OF GILBERT D. SIGALA  
3 1818 W. Beverly Blvd., Suite 206  
4 Montebello, CA 90640  
5 Phone Number: (323) 726-2150  
6 Facsimile Number: (323) 726-9183

7 IN THE UNITED STATES BANKRUPTCY COURT  
8 FOR THE EASTERN DISTRICT OF VIRGINIA  
9 RICHMOND DIVISION

11 In re:	}	Chapter 11
12 CIRCUIT CITY STORES, INC., et al.,	}	Case No. 08-35653
13	}	NOTICE OF MOTION AND MOTION
14 Debtors.	}	TO FILE A LATE PROOF OF CLAIM
15	}	Date: February 24, 2010
16	}	Time: 2:00 p.m. Eastern Standard
	}	Time

17 TO ALL DEBTORS AND THEIR ATTORNEYS OF RECORD:

18 NOTICE IS HEREBY GIVEN that on February 24, 2010 at 2:00 p.m. Eastern Standard  
19 Time, or as soon thereafter as counsel may be heard by the above-entitled Court, before the  
20 Honorable Kevin Huennekens, United States Bankruptcy Judge, in the United States Bankruptcy  
21 Court for the Eastern District of Virginia, U.S. Courthouse, 701 East Broad Street, Room 5000,  
22 Richmond, VA 23219-1888 in the above referenced matter. Notice is hereby given that debtor  
23 John Batioff will move the court for an order granting relief to file a late proof of claim in the above  
24 entitled matter. This motion will be accompanied by the attached points and authorities, declarations  
25 and other oral evidence at the time of the hearing.  
26  
27  
28

Gilbert D. Sigala, Esq. (State Bar No. 109905)  
LAW OFFICES OF GILBERT D. SIGALA  
1818 W. Beverly Blvd., Suite 206  
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FILED  
2010 JAN 26 PM 3:21  
RICHMOND DIVISION

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

In re:	)	Chapter 11
CIRCUIT CITY STORES, INC., et al.,	)	Case No. 08-35653
	)	REQUEST TELEPHONIC
Debtors.	)	APPEARANCE
	)	Date: Feb. 24, 2010
	)	Time: 2:00 p.m. Eastern Standard
	)	Judge: Huennekens

Request is hereby made for a telephonic appearance at the proceeding to take place on February 24, 2010 at 2:00 p.m. Eastern Standard Time before the Honorable Kevin Huennekens, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Eastern District of Virginia, U.S. Courthouse, 701 East Broad Street, Room 5000, Richmond, VA 23219-1888 in the above referenced matter. This request is necessary because counsel is out of state and cannot personally appear.

**ORDER**

Good cause being shown creditor's counsel is hereby allowed to appear by telephone.

Date: January \_\_\_, 2010

UNITED STATES BANKRUPTCY JUDGE